NOTES OF CASES.

Duty to Warn Servant—Lightning Not Always Zigzag.—An employee engaged in repairing a pipe line is chargeable with notice of the law of nature that gas arising from crude petroleum rarifies the air and produces a point of light resistance, so that a bolt of lightning descending to the earth will follow the trail of the gas, and that, if he is working at the point of origin of such gas, a pool of oil in which he is standing may be ignited by the lightning; and hence the employer is not required to warn him of such danger. Butler *v.* Gulf Pipe Line Co. (Civ. App.), 144 S. W. 340.

Imputation That White Woman Was Colored as Libel.—In Jones *v.* R. L. Polk & Co. (Ala.), 67 So. 577, the facts showed that the appellant sued appellee in an action of libel for that appellee falsely, maliciously, and with intent to defame her, published of and concerning her in a book known as "Selma City Directory" that appellant was a colored person, etc. The proof was that on page 180 of the directory printed by appellee appellant's name was printed with an asterisk before it. On page 87 of the same book it was shown that an asterisk before a name denoted that the person named was colored. Appellant's name was printed in the same column with a dozen or more Joneses, some of whom were properly designated as colored. Appellant was of pure Caucasian descent. On these facts the judgment of the court below for the appellee was affirmed. Judge Sayre said: "The general statement that a person is 'colored' imputes no crime, no misconduct, no mental, moral, or physical fault for which one may be justly held accountable to public opinion; and yet in the peculiar social conditions prevailing in this jurisdiction, to publish of and concerning a white woman that she is colored, meaning that she is a negro, or has negro blood in her veins, is libelous within the definition of libel commonly found in the books. Flood *v.* News & Courier Co., 71 S. C. 112, 50 S. E. 637, 4 Ann. Cas. 685. Whether, then, such a publication is libelous in any particular case depends upon circumstances. Here there is room for innocent mistakes. Appellee offered evidence that this asterisk got in front of appellant's name by mistake of the printer hired by it to print its directory, and that immediately upon discovery of the error it was corrected, and on this evidence, under the charge of the court stating the law of the case, the jury acquitted appellee. Appellee's evidence made a case on which it was proper to leave it to the jury to find whether appellee's publication came within the saving of the following principle of the law of libel: The publisher of matter, in its nature calculated to defame and injure another, but not necessarily libelous, must be presumed to have intended to do that which the publication is calculated to bring about, and so must

be presumed to have made the publication with malice, unless he can show the contrary; and it is for him to show the contrary. In other words, appellee was properly allowed to acquit itself by satisfying the jury that it made the publication complained of neither recklessly nor with knowledge that the same was libelous."—Law Notes.

NOTE.—As to the appellation of "negro" being slander in Virginia, see Spencer *v.* Looney, 82 S. E. 745, and 20 Va. Law Reg. 527, where the point is annotated.

Assault with Automobile.—The thousands of reported assault and battery cases disclose the use of many and varied instrumentalities. Assaults have been committed with hands, heads, feet, furniture, wearing apparel, books, rolling pins, kisses, etc. Assault with an automobile suggests a giant swinging and throwing cars, as the average man may handle a chair. Nevertheless, the opinion in State *v.* Schutte, 93 Atlantic Reporter, 112, reads in part: "The plaintiff in error was convicted of assault and battery by wilfully and unlawfully' striking and wounding one Thomas Mitchell with an automobile, as charged in the indictment." As to fast driving the court says: "It requires neither argument nor illustration to show that the excessive rate of speed at which an automobile is driven is a product of the will of its driver and not the result of his mere inattention or negligence. The two cannot be confused any more than the hurling of a baseball bat into a crowd of spectators could be confused with its accidentally slipping from the hand of the batter. If a blow inflicted in the former manner would constitute an assault, so must a blow inflicted by a willful act applied to a much more dangerous agency, since it cannot be that what would be a crime if done with a plaything weighing a few ounces ceases to be a crime if committed with an engine weighing thousands of pounds driven by many horse powers of force. It has often been held that responsibility increases with the likelihood of injury, but never the reverse, that I am aware of. There is therefore no legal reason why the crime of assault and battery may not be committed by driving an automobile on a public highway at a rate of speed that endangers the safety of other persons and actually results in such an injury."

Food—Warranty of Quality by Restaurant Keeper.—That there is no implied warranty of the quality of food furnished by a restaurant keeper to a customer for immediate consumption, since the transaction does not constitute a sale, but a rendition of service, is held in Merrill *v.* Hodson, L. R. A. 1915B, 481.